

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

BRENT A. BUCHANAN

Claimant

VS.

ALL PRO SERVICES, INC.

Respondent

AND

CONTINENTAL WESTERN INSURANCE COMPANY)

Insurance Carrier

Docket No. 1,016,355

ORDER

Respondent and its insurance carrier (respondent) appealed the June 24, 2004 preliminary hearing Order entered by Administrative Law Judge Bryce D. Benedict.

ISSUES

Claimant alleges he suffered a series of traumas while working for respondent from February 23 through February 27, 2004. In the June 24, 2004 Order, Judge Benedict awarded claimant medical benefits and temporary total disability benefits after finding claimant had just cause for failing to provide respondent with notice of his accidental injury within 10 days of February 23, 2004, which is the date of accident found by the Judge.

Respondent contends Judge Benedict erred. Respondent argues claimant failed to provide the company with notice of his accidental injury, which it contends claimant sustained on February 23, 2004, within 10 days of the injury or, instead, claimant failed to prove just cause for not providing notice within 10 days. Accordingly, respondent requests the Board to reverse the June 24, 2004 Order.

Conversely, claimant argues the Board should affirm the Judge's findings in the preliminary hearing Order. In the alternative, claimant argues the Board should find the date of accident is either February 27, 2004 (the last day claimant worked for respondent), February 28, 2004 (the date claimant realized he was injured and needed medical care), or March 10, 2004 (the date he gave notice to respondent), and, therefore, notice to respondent was timely.

The only issue before the Board on this appeal is whether claimant provided respondent with timely notice of his accidental injury.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record compiled to date and considering the parties' arguments, the Board finds and concludes:

Claimant worked for respondent as a carpet cleaner. On February 23, 2004, claimant's back ached while performing his work duties throughout the day. When claimant awoke the next day, he could not move his neck without experiencing pain. Claimant did not go to work that day or the next day (February 24 and 25, 2004). Claimant worked for respondent on February 26 and 27, 2004, feeling somewhat better but with his back still hurting.

When claimant awoke on Saturday, February 28, 2004, he experienced the same problem as when he awoke on February 24. Claimant testified, in part:

When I woke up, I couldn't move my neck again and then that's when I realized it's a -- I've actually got a -- some kind of a problem here. It wasn't just something that was going to get better.¹

February 27, 2004, was the last day claimant worked for respondent.

Because of his symptoms, claimant sought and received treatment from a chiropractor on March 1, 2 and 3, 2004. When that treatment did not help, on March 10, 2004, claimant began seeing Dr. John D. Rockefeller, his personal physician. Also on March 10, 2004, claimant provided notice of his injury to respondent.

Treatment with Dr. Rockefeller included medication, an MRI and physical therapy. According to claimant, after one visit to physical therapy claimant was advised the insurance carrier would not pay for the therapy. Claimant then saw a Dr. Henler,² who also prescribed physical therapy.

Claimant's initial symptoms included pain in his upper back, neck and right upper extremity. Currently, claimant is experiencing problems in his right upper extremity.

¹ P.H. Trans. at 14-15.

² *Id.* at 17.

Respondent contends claimant sustained accidental injury on February 23, 2004. Claimant points to either February 27, 28 or March 10, 2004, as the date of accident. The Board concludes claimant did not sustain a single, specific trauma but, rather, sustained a multiple trauma injury. As claimant was last exposed to the injury-producing trauma on February 27, 2004, that date is the appropriate date of accident for this claim.³

Respondent argues claimant did not provide the company with notice of his accidental injury within 10 days of his accident nor did he prove just cause for failing to provide notice within that time. In general, the Workers Compensation Act provides that a worker has 10 days to provide an employer with notice of an accidental injury.⁴ In counting those 10 days, weekends are excluded.⁵ Excluding weekends, notice to respondent on March 10, 2004, is within 10 days of the February 27, 2004 accident. Therefore, claimant provided timely notice of his accidental injury to respondent.

WHEREFORE, the Board affirms the June 24, 2004 preliminary hearing Order.

IT IS SO ORDERED.

Dated this ____ day of August 2004.

BOARD MEMBER

c: John J. Bryan, Attorney for Claimant
James B. Biggs, Attorney for Respondent and its Insurance Carrier
Bryce D. Benedict, Administrative Law Judge
Paula S. Greathouse, Workers Compensation Director

³ See *Treaster v. Dillon Companies, Inc.*, 267 Kan. 610, 987 P.2d 325 (1999).

⁴ K.S.A. 44-520.

⁵ See *McIntyre v. A.L. Abercrombie, Inc.*, 23 Kan. App. 2d 204, 929 P.2d 1386 (1996); *Hicks v. Wheatlands Health Care Center*, No. 251,804, 2000 WL 1134456 (Kan. WCAB July 10, 2000).